



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,627	02/20/2002	Greg Volgas	HCC-12 (306*203)	1948

7590 03/26/2003

Connolly, Bove, Lodge & Hutz, LLP
P.O. Box 2207
Wilmington, DE 19899-2207

EXAMINER

CLARDY, S

ART UNIT	PAPER NUMBER
----------	--------------

1616

DATE MAILED: 03/26/2003

3

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/081,627

Applicant(s)
Volgas et al

Examiner
S. Mark Clardy

Art Unit
1616



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Feb 20, 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2 6) ☐ Other:

Art Unit: 1616

Claims 1-56 are pending in this application claims the benefit under 35 USC 119(e) of US Provisional Application No. 60/270,311, filed February 21, 200

Misnumbered claims beginning with the second claim 32 been renumbered 33-56.

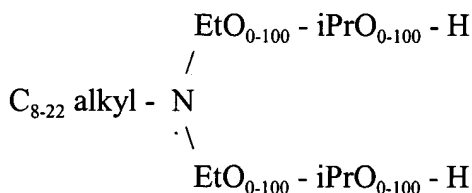
Applicants' claims are drawn to agrochemical compositions comprising:

- a) a (mono/di/tri)carboxylic or phosphorus containing acid (not glyphosate)

Mono-COOH: formic, acetic, propionic, butyric, valeric (claim 5)
 Di-COOH: oxalic, malonic, succinic, glutaric (claim 6)
 Tri-COOH: citric (claim 7)
 P: phosphoric, phosphorous (claims 8, 9, 29)

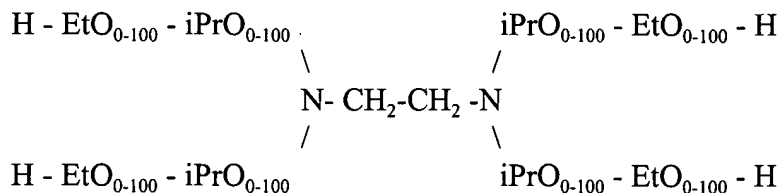
- b) an amine surfactant

fatty amine alkoxylate (claim 10)



Tallowamine ethoxylate (claim 12)

alkoxylated ethylenediamine (claim 11)



- c) a water soluble agricultural chemical (fertilizer, pesticide, micronutrient, herbicide, insecticide, fungicide); exemplified: 2,4-D, glyphosate, dicamba

Art Unit: 1616

glyphosate, glufosinate (claims 20-22)

chloramben, dicamba (claim 24)

phoxycarboxylic acid herbicides (claim 25)

pyridine carboxylic acid herbicides (claim 27)

✓ Claim 26 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 25.

When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

✓ Claims 25, 27, and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the

Art Unit: 1616

claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 25, 27 and 28 recite the broad recitations "phenoxy carboxylic acid", "pyridine carboxylic acid", and "quinoline carboxylic acid", respectively, and the claims also recite various specific herbicides within these classes (e.g., 2,4-D, 2,4,5-T, etc.; clopyralide, fluroxypyr, etc.; quiclorac (quinclorac?), quinmerac) which are the narrower statements of the range/limitations.

Claims 11, 33, and 52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear whether the terminal groups are intended to be -H or -OH; -H occurs on one side of the structure, -OH on the other.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Berk et al (US 5,389,598), Berger et al (US 6,121,200), Brigance (US 6,432,878), and Reiersen (US 6,329,322).

Berk et al teach storage stable aqueous concentrate formulations of pesticides (i.e., herbicides) with reduced eye irritancy (abstract) comprising an active agent such as glyphosate

Art Unit: 1616

(col 4, lines 18-21), an alkoxylated alkylamine surfactant (lines 25-40) such as ethoxylated tallowamine or cocoamine (examples), and an eye irritancy reducing agent which is an alkyl monocarboxylic or dicarboxylic acid (lines 44-54; col 6, lines 39-46).

Berger et al teach pesticidal compositions comprising polyoxyalkylene alkylamines in which eye irritancy is reduced by the addition of various compounds such as mono- and di-alcohol phosphates which may be optionally polyalkoxylated (col 4, lines 23-30; columns 8-9), or alkyl polyalkoxylated phosphoric acid esters (column 12). Various herbicides may be used in the compositions, including glyphosate (columns 10-11).

Brigance teaches herbicidal (i.e., glyphosate) adjuvant compositions comprising polyoxyalkylene amine surfactants with an eye irritation reducing compound which is a carboxylic acid which is capable of complexing or chelating metal ions in aqueous solution (abstract). Various pesticidal agents may be incorporated into the compositions (columns 4-5), and the carboxylic acid component may be those with one or more functional groups capable of interacting with metal ions. Examples include aminocarboxylic acids such as ethylenediaminetetraacetic acid (EDTA) and hydroxycarboxylic acids such as citric, glycolic, gluconic, etc. (col 3, lines 20-67).

Reierson teaches aqueous glyphosate compositions comprising a stability enhancing phosphate or phosphonate amphoteric surfactant (columns 2-6).

One of ordinary skill in the art would be motivated to combine these references because they disclose herbicidal, specifically glyphosate, compositions and adjuvants which are useful for imparting desired characteristics to such compositions.

Art Unit: 1616

Thus it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to have combined the carboxylic or phosphorus containing acids, amine surfactants, and agriculturally active agents (i.e., herbicides) as claimed herein because the prior art teaches that the amine surfactants are useful for activity enhancement in herbicidal (glyphosate) compositions, and because the acid components provide reduced eye irritancy and enhanced stability.

No unobvious or unexpected results are noted; no claim is allowed.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103c and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is (703) 308-4550.



S. Mark Clardy
Primary Examiner
AU 1616

March 21, 2003